IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1430 of 1998
In
SPECIAL CIVIL APPLICATION No. 7735 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEDICAL OFFICER PRIAMRY HEALTH CENTRE & 1 - Appellant(s)

Versus

JIKUBHAI R SAPARIA - Defendant(s)

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Appearance :
MR PJ KANABAR for Petitioner No(s).: 1,2.
MR PH PATHAK for Respondent No(s).: 1.
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 08/08/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1.Present is an appeal by dissatisfied writ petitioners against the order dated 7.10.1998 passed in Special Civil Application No. 7735 of 1996, wherein, the learned Single Judge has refused to interfere in the matter.

2. The chequered history of the matter can be summarised in the following manner. The respondent-workman claimed to have joined the services of the appellant somewhere in the year 1973 and when he was terminated on 8.12.1982, he did not immediately come to the High Court, but awaited some order in his favour. Somewhere in the year 1983, he was re-appointed, being aggrieved by the non-regularisation and appointment on daily wages, the workman filed Special Civil Application No. 5163 of 1985. In the said writ application, he challenged the order of termination dated 8.12.1982 and also sought regularisation, submitting inter alia that as his termination was bad and as he is in continuous service, he deserves to be regularised. He prayed for ad-interim writ. On 24.9.1985, this Court issued notices to other side and also granted interim relief in favour of the workman, directing the present appellant-employer not to terminate the services. On

9.12.1985, in the said Special Civil Application No. 5163 of 1985, the interim order was modified, the Court vacated the interim order, but however, directed that till the appointment of regular employee on regular basis, the workman can be continued with the present appellant. It appears that thereafter, the present respondent-workman continued.

3. It is to be noted that the Special Civil Application No. 5163 of 1985 is still pending consideration.

4. After making appointment on regular basis, vide order dated 10.4.1986, the appellant again removed the workman from the services. This time, taking an exception to the action, the workman opted for a Reference. The Reference was registered as Reference No. 1747 of 1986. It appears that notices were issued to the original department, but in the meanwhile, because of the reshuffle in the departments, proper representation could not be made before the Labour Court. The Labour Court, vide its order dated 4.1.1990 made an award in favour of the workman.

5. Even at this stage, it is to be noted that the workman did not inform the Labour Court that the termination dated 8.12.1982 was pending consideration in Special Civil Application No. 5163 of 1985, nor he informed the

Labour Court that on 24.9.1985, he could secure an ad-interim order, which was modified on 9.12.1985 and since thereafter, the workman was continuing in service with the appellant.

6. Exparte award dated 4.1.1990 was challenged by the appellant in Special Civil Application No. 6185 of 1990, the said Special Civil Application came to be dismissed on 5.9.1990 with liberty in favour of the present appellant to make an application for review. Exploiting the liberty extended by the High Court, the appellant filed Misc. Civil Application No. 67 of 1990 and prayed to the Labour Court that the exparte award and order be recalled/reviewed and proper opportunity of representation be given to the present appellant. The learned Labour Court allowed the application and condoned the delay, but vide its order order dated 20.8.1996 rejected the application seeking review. The appellant being aggrieved by the said order, dated 20.8.1996, again filed Special Civil Application No. 7735 of 1996. They also prayed for an interim order. On 2.4.1997, the learned Single Judge granted stay in relation to the back-wages, but refused any order in relation to reinstatement. Again being dissatisfied with the order passed by the learned Single Judge, the

appellants came in Letters Patent Appeal No. 1327 of 1997, which was dismissed on 19.1.1998. Thereafter, the matter was heard by the learned Single Judge and by his order dated 7.10.1998, he rejected the Special Civil Application. The appellants are again before this Court in the Letters Patent Appeal.

7. Mr. P.J. Kanabar, learned counsel for the appellants submitted that if proper opportunity was given to the appellants, they could bring to the notice of the Labour Court that particular facts which had a material bearing on the subject were purposefully suppressed by the other side and without informing the Labour Court that there were interim orders in favour of the respondent, the present respondent had encashed his continuity of service. He also submitted that it is not unheard in the State departments that after reshuffle of the departments, sometimes, a problem creeps up and before proper track is maintained, the orders are passed against the interests of the State. His further submission is that from the merits also, it would appear that the Labour Court did not record a specific finding that in 12 months preceding the date of the termination, the workman had worked for 240 days. He submits that present is a case where the

matter needs to be remitted back to the learned Labour Court with liberty in favour of the present appellants to submit a written statement and take part in the proceedings.

8. Taking an exception to the argument raised by the learned counsel for the appellants, Mr. Pathak, learned counsel for the respondent vehemently submitted that all the matters were different and if termination order dated 8.12.1982, filing of the writ application No. 5163 of 1985, original interim order and modified interim order even if were brought to the notice of the Labour Court, the same were not to make any difference. His submission was that the case of the present respondent would fall within the sweep of Section 25B(1) of the Industrial Disputes Act, 1947, because, the respondent was in continuous service. When we confronted Mr. Pathak with his own argument recorded by the Court in order dated 9.3.99, wherein, Mr. Pathak has stated that it was not necessary to draw attention of the Labour Court to all such facts, because, the labourer/workman had completed 240 days after his appointment from 2.9.1983, Mr. Pathak submitted that he had modified the arguments at the interim stage, but the fact remained that the

respondent continued in services for long many years.

9. We again inquired from Mr. Pathak that if the petitioner was out of job from 8.12.1982 till his re-appointment in 1983 and he continued in employment under the interim orders of the Court, then, how could extra mileage be obtained by the workman and how could the Labour Court record a finding that the present respondent-workman was in continuous service for years. Mr. Pathak submitted that within 12 months preceding the date of termination i.e. 10.4.1986, as the respondent was continuing from the year 1993, the Labour Court was justified in making the award.

10. The argument of Mr. Pathak is that the workman had worked continuously for long many years and such finding recorded by the Labor Court would not be bad, because, the workman was terminated on 8.12.1982 and he came to be re-appointed on 2.9.1983. From the workman's own admission, it would become clear that for a period of almost 9 months, he was not in employment. If the provisions contained in Section 25-F of the Industrial Disputes Act, 1947 are to be applied, then, the workman is required to prove before the Court that in last 12 months preceding the date of termination/retrenchment, he had worked for 240 days.

In the present case, the workman came to be terminated on 10.4.1986. The workman was required to prove that within a period starting from 10.4.1985 to 10.4.1986, he had worked for 240 days. Within this period, the interim orders had already come into play and the workman had enjoyed the benefits flowing from the interim orders. It is trite law that when an interim order is made by the Court then a party in whose favour interim orders are made, would not be put to an advantageous position except for protection of status-quo as it obtained on that day. Simply because under the orders of the Court, the respondent-workman continued, it cannot be argued that such period would be taken to be a period for determination of continuous service.

11. All these facts were required to be brought to the notice of the Labour Court. For the reasons best known to the workman, he did not bring all these facts to the notice of the Labour Court. It appears that the Labour Court was kept in dark and after reshuffle of the departments, the workman could secure an exparte order.

12. The learned Labour Court, in our considered opinion, was absolutely unjustified in rejecting the application, whereunder, the exparte award was sought

to be reviewed. When such material facts, which have a material bearing on the merits of the matter are brought to the notice of any Court, then, a Court is required to review its earlier order. The law of review is clear when it says that particular facts which could have effected the decision if could not be brought to the notice of the Court or particular facts, which had a material bearing on the merits of the matter, were suppressed by the party taking advantage from the Court then review should be allowed. Present is also a case where apart from the above the Labour Court should have taken into consideration that because of the reshuffle, the department was not properly represented.

13. It is also to be noted that the said Special Civil Application No. 5163 of 1985 is still pending consideration, in which, on 19.4.2001, Mr. Justice D.M. Dharmadhikari (the then Chief Justice) had observed that Mr. Pathak submitted before the said Hon'ble Judge that his petition would survive if Letters Patent Appeal No.1430 of 1998 is decided in favour of the workman. The Hon'ble Judge ordered that Special Civil Application No. 5163 of 1985 be connected with Letters Patent Appeal No. 1430 of 1998 and after the decision

in Letters Patent Appeal No. 1430 of 1998, the said Special Civil Application be listed for hearing. If the said Special Civil Application No. 5163 of 1985 is still pending consideration, then, pendency of the said Special Civil Application would also have a material bearing on the claim of either of the party.

14. Taking into consideration the totality of the circumstances and for the reasons aforesaid, we are constrained to hold that the learned Labour Court acted with material irregularity in exercise of its jurisdiction in not granting the review application. The learned Single Judge, in our humble opinion, went wrong in relying upon certain observations made in Letters Patent Appeal No. 1327 of 1997, because, the said Letters Patent Appeal was not relating to the merits of the matter. The appellant was simply challenging non-grant of the full interim relief. When an interim order is made by any Court, then, interim order is confined only to the interim prayer and would not affect the merits of the matter.

15. We set aside the order passed by the learned Single Judge. The application filed by the appellant for review of the matter is allowed. The award dated 4.1.1990 made in Reference Case No. 1747 of 1986 is

hereby quashed.

16. The parties present in the Court are hereby directed to appear before the Labour Court on 12th September, 2005. The Labour Court shall issue further instructions to the parties in relation to the merits of the matter. It is expected of the appellant that without creating any delay in the matter, they shall submit their written statement at their earliest. We hereby direct the learned Labour Court to dispose of the Reference within a period of four months from the date of submission of the written statement by the present appellant. It is also directed that the learned Labour Court shall fix a date for filing of the written statement.

17. If wisdom prevails upon the respondent-workman he may appear and bring the details of the facts to the notice of the Labour Court, other wise, the Labour Court shall be entitled to take into consideration the conduct exhibited by the workman. No costs.

18. At this stage, learned counsel for the respondent-workman submits that effect and operation of this order be stayed for six weeks so that the workman may approach the Apex Court. We find no reason to stay it. The prayer is rejected.

19. Back-wages already deposited by the appellant and which have been invested in the Fixed Deposit shall continue to be in the Fixed Deposit till disposal of the Reference.

20. Let Special Civil Application No. 5163 of 1985 be listed before the appropriate Bench for hearing.

[R.S. GARG, J.]

[RAVI R. TRIPATHI, J.]

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